

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3750 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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KOLI GODAVRIBEN SARDUL

Versus

STATE OF GUJARAT

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Appearance:

MS SUBHADRA G PATEL for Petitioner

MR KC SHAH, AGP for Respondents.

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 30/08/96

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner-detenu-Koli Godavariben Sardul has brought under challenge the detention order dated 30/3/1996 rendered by the respondent no.2 u/S. 3(1) of the Gujarat Prevention of Anti-Social Activities Ac, 1985 (Act No. 16 of 1985), hereinafter referred to as 'the PASA Act'.

2. The grounds on which the impugned order of detention has been passed appear at Annexure-B to the petition. They inter-alia indicate that the detenu has been carrying on criminal and anti-social activities of dealing in liquor and following prohibition offences have been registered in the Vadhwan Police Stations against her :-

- 1) CR 974/93 U/Ss.66(1) B of Bombay Prohi.Act  
2/5/1994 Pending in Court.
- 2) CR 70/94 U/Ss.66(1) B of Bombay Prohi.Act  
7/7/94 Pending in Court.
- 3) 109/94 U/S.66(1) B of Bombay Prohi.Act  
27/10/94 Pending in the Court.
- 4) 124/94 U/Ss. 66B,65E of Bombay Prohi.Act  
4/12/94 Pending in the Court.
- 5) 13/95 U/Ss.66(1)B, 65E of Bombay Prohi.Act  
23/1/95 Pending in the Court.
- 6) 52/95 U/Ss.66B, 65E of Bomnbay Prohi.Act  
3/5/95 Pending trial.
- 7) 68/95 U/Ss.66B, 65E of Bombay Prohi.Act  
12/6/95 Pending trial.
- 8) 82/95 U/Ss.66B, 65E of Bombay Prohi. Act  
28/7/95 Pending trial.
- 9) 98/95 U/Ss.66B, 65E of Bombay Prohi. Act  
24/8/95 Pending trial.
- 10) 144/95 U/Ss.66B, 65E of Bombay Prohi. Act  
1/11/95 Pending investigation.
- 11) 26/96 U/Ss. 66B, 65E of Bombay Prohi. Act  
16/2/96. Pending investigation.

It may be noted that reference of the bail applications and orders passed thereon has been made in the grounds aforesaid of detention. It may also be noted that the detaining authority has relied upon the bail application and the order of bail passed in all the aforesaid cases for its subjective satisfaction that even after the bail the petitioner has been indulging in the

commission of offences and criminal activity.

3. Six witnesses have been examined and reference has been made to the statements of such witnesses for saying that the petitioner has been indulging in the anti-social and illegal activities of dealing in country liquor resulting in the insecurity in the people of the locality particularly with reference to the adverse effect that would be caused in the tender minds of children. The petitioner has also been causing atmosphere of fear with the aid of her associates by threatening and abusing those who would ask the petitioner to stop the business of selling liquor. It is under such circumstances noted in the grounds of detention that it has been asserted that the petitioner's anti-social activity tends to obstruct maintenance of public order. It is also likely to affect adversely public health and would cause adverse effect on the future generation. It is this order of detention which has been under challenge before this Court.

4. I have heard the learned advocate for the petitioner and learned AGP for the State. The petitioner has challenged the aforesaid order of detention as also the continued detention on number of grounds inter-alia on the ground that the petitioner has not been supplied with the copies of bail applications and/or bail orders concerning C.R. Nos. 42/94, 70/94 and other C.R.s of the year 1994. According to the petitioner the said documents are vital and relevant for the purpose of making effective representation, since the detaining authority has relied upon the same. Non-supply of the bail orders has violated the petitioner's fundamental rights guaranteed under Article 22(5) of the Constitution of India for making effective representation and, therefore, continued detention of the petitioner has become illegal. It is not in dispute that a demand was made for supply of such documents at the earliest point of time from the side of the detenu.

5. The petitioner has challenged the aforesaid order of detention as also continued detention on number of grounds inter-alia on the ground that the detenu has not been supplied copies of the bail application and the bail orders as stated above. On verification of this fact it is fairly submitted by the Ld. AGP that this material regarding C.R. Nos. 42/94 and 70/94 are not supplied to the detenu. It is on this ground that the petition is required to be allowed when there is no answer to the proposition arising from this ground and well settled in the case of Abdul Sathar Ibrahim Manik v. Union of India

reported in AIR 1991 SC 2261, which in turn has referred to M. Ahmed Kutty v/s. Union of India reported in 1990 (2) SCC page 1. The principle is that in a case where detenu is released on bail and is at liberty at the time of passing of order of detention, then the detaining authority has to necessarily rely upon such documents as that would be a vital ground for detention. In such a case the bail application and the order granting bail should necessarily be placed before the authority and the copies should also be supplied to the detenu. As stated above, in the present case also such vital documents as bail application and the bail order in respect of the aforesaid C.R. no. have not been supplied to the detenu resulting in adversely affecting the right of making effective representation available to the detenu under Article 22 (5) of the Constitution of India.

6. There are other grounds of challenge levelled against the order of detention. However, in view of the fact that the petitioner would succeed on the aforesaid ground of challenge to the continued detention, it would not be necessary to deal with the other grounds. Hence, following order is passed :-

The continued detention of the petitioner is held to be illegal and is hereby put to an end. The detenu-Koli Godavariben Sardul is, therefore, directed to be set at liberty forthwith if he is not required to be detained in any other case. Rule made absolute.

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